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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)

v.)

WILL HICKS,
Defendant)

INFORMATION

The United States Attorney charges, that at all times material to this Information:

Count 1

Conspiracy to Make False Statements to Auditors and Maintain False Books and Records
Title 18, United States Code. Section 371

INTRODUCTION

1. From 1991 until 1996, defendant **WILL HICKS** was a securities analyst at Cowen and Company in Boston, Massachusetts, where he specialized in coverage of the health care industry. During this period he issued reports on healthcare companies including HealthSouth Corporation ("HealthSouth"). From 1996 until March 1999, defendant **HICKS** was a principal in 21st Century Health Ventures, a company he owned with the then Chief Executive Officer of HealthSouth (the "CEO") and Michael Martin, the then Chief Financial Officer of HealthSouth. In November 1999, defendant **HICKS** was hired by the CEO for the position of Vice President of Investments at HealthSouth. Defendant **HICKS'** responsibilities included managing HealthSouth's investment portfolio and advising HealthSouth on the viability

of current and potential investments. Defendant **HICKS** also caused the preparation of summaries of HealthSouth's investment portfolio and met with HealthSouth's auditors to review and discuss the value of the investment portfolio.

2. HealthSouth was a corporation organized under the laws of the State of Delaware with its headquarters in Birmingham, Alabama. HealthSouth claimed to be the nation's largest provider of outpatient surgery, diagnostic imaging and rehabilitative healthcare services with approximately 1800 locations in all 50 states, Puerto Rico, the United Kingdom, Australia, and Canada. HealthSouth's common stock was listed on the New York Stock Exchange.

3. HealthSouth was an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ('the Act'). To sell securities to members of the public and maintain public trading of its securities in the United States, HealthSouth was required to comply with the provisions of the federal securities laws, including Section 13(a) of the Act (Title 15, United States Code, Sections 78m(a) and 78o(d)) and the regulations promulgated thereunder, that were designed to ensure that the company's financial information was accurately recorded and disclosed to the public.

4. Under provisions of the federal securities laws and the provisions promulgated thereunder, HealthSouth was required to, among other things (a) file with the **SEC** annual financial statements audited by an independent accountant; (b) file with the **SEC** quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period; (c) make and keep books, records and accounts that accurately and fairly reflected the transactions and dispositions of the company's assets; and (d) devise and maintain a system of internal accounting controls sufficient to provide - (i)

reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other criteria applicable to such statements and to maintain the accountability of assets; and (ii) reasonable assurances that the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

5. From 1986, when HealthSouth issued its initial public offering, it filed quarterly reports, called Forms 10-Q, and annual reports, called Forms 10-K, with the United States Securities and Exchange Commission ("SEC"), which is located in Washington, D.C. These reports were transmitted directly and indirectly from HealthSouth's offices in Birmingham, Alabama to the offices of RCI Group, Inc. in Washington, D.C., a filing agent that assists companies in electronically filing periodic reports with the SEC, and were thereafter transmitted electronically to and filed electronically with the SEC, where they were available to the investing public.

CERTAIN RELEVANT ACCOUNTING PRINCIPLES

6. Public companies, such as HealthSouth, typically report the financial results of their operations in financial statements that include both an Income Statement and a Balance Sheet. A company's Income Statement reports, among other things, revenue recognized, expenses incurred and income earned during a stated period of time – usually for a fiscal quarter or fiscal year. Within an Income Statement, expenses are generally subtracted from revenues to calculate net income. A company's Balance Sheet reports, among other things, the assets and

liabilities of a company at a point in time, usually at the end of a fiscal quarter or the end of a fiscal year.

7. Since *GAAP* generally require that any increase in revenue or decrease in expenses be matched with either an increase in assets or decrease in liabilities on the Balance Sheet, any manipulation resulting in an increase in income or revenues would require a corresponding entry on the Balance Sheet.

HEALTHSOUTH'S COMMUNICATIONS WITH INVESTORS

8. The management of many public companies, including HealthSouth, provided “guidance” to the investing public regarding anticipated earnings per share for upcoming reporting periods. Relying in part on a company’s “guidance,” many professional securities analysts disseminated to the public their own estimates of the company’s expected performance. These “earnings estimates” or “analyst expectations” were closely followed by investors. Often, if a company announces earnings that fail to either meet or exceed analyst expectations, the price of the company’s securities will decline.

9. Numerous analysts of major Wall Street investment firms followed HealthSouth’s performance and issued “guidance” estimates regarding its expected earnings. These analysts considered, among other things, HealthSouth management’s “guidance” concerning estimated revenue, income and earnings per share, to gauge HealthSouth’s performance, financial condition, and to predict HealthSouth’s expected earnings. Similarly, market participants and members of the investing public considered and relied upon HealthSouth’s periodic financial statements, including the reports filed with the **SEC** and guidance concerning actual operating results.

HEALTHSOUTH'S EARNINGS SHORTFALLS

10. Beginning at least in or about 1996, a group of HealthSouth's senior officers, which included the CEO, (collectively, the "Senior Officers") and others, recognized that HealthSouth's financial results were failing to produce sufficient earnings per share to meet or exceed Wall Street "earning expectations" or "analyst expectations." The Senior Officers and others recognized that the earnings shortfall created a substantial risk that, unless HealthSouth's earnings per share were artificially inflated, HealthSouth's earnings would fail to meet analyst expectations and the market price of HealthSouth's securities would likely decline.

THE CONSPIRACY

11. Beginning in or about February 2001 in the Northern District of Alabama and elsewhere, the defendant,

WILL HICKS

knowingly and willfully joined a conspiracy with other persons to commit offenses against the United States, that is, a conspiracy to:

(1) wilfully and knowingly make and cause to be made false and misleading statements to auditors and to omit to state, and cause others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with an audit of HealthSouth's financial statements in violation of Title 15, United States Code, Sections 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-2; and

(2) willfully and knowingly falsify and cause to be falsified books, records and accounts of HealthSouth in violation of Title 15, United States Code, Sections 78m(b) (2) (A) & (B), 78m(b) (5) and 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-1.

THE PURPOSE OF THE CONSPIRACY

12. The purpose of the conspiracy was for the Senior Officers and others to fraudulently enrich themselves by inflating artificially HealthSouth's publicly reported earnings and earnings per share and by fraudulently enhancing its reported financial condition.

THE MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and others sought to accomplish the conspiracy included, among other things, the following:

13. It was a part of the conspiracy that the Senior Officers of HealthSouth and others would and did engage in a scheme to artificially inflate HealthSouth's publicly reported earnings and the value of its assets.

14. It was further part of the conspiracy that false entries were made in HealthSouth's books and records for the purpose of artificially inflating HealthSouth's revenue and earnings.

15. It was further part of the conspiracy that corresponding false entries were made in HealthSouth's books and records for the purpose of artificially inflating the value of its assets, including, but not limited to, false entries made to (a) Property, Plant and Equipment ("PP&E") accounts; (b) cash accounts; (c) inventory accounts; (d) intangible asset (goodwill) accounts; and (e) HealthSouth's investment portfolio.

16. It was further part of the conspiracy that the Senior Officers and others caused

HealthSouth to file publicly with the **SEC** annual reports and quarterly reports that materially misstated, among other things, HealthSouth's net income, revenue, earnings per share, assets and liabilities from at least 1996 until the present. As a result of the scheme, HealthSouth's revenue, earnings and assets were inflated by hundreds of millions of dollars in publicly filed reports.

17. It was further part of the conspiracy that in order to ensure that HealthSouth's balance sheet would have sufficient assets to correspond to the fraudulently created income and revenue figures for a current period, the Senior Officers would fraudulently inflate the value of assets on the balance sheet by, among other ways, overstating the value of assets in HealthSouth's investment portfolio.

18. It was further part of the conspiracy that certain Senior Officers would and did instruct defendant **HICKS** to make false statements to, and omit material facts ~~from~~ information provided to, HealthSouth's accountants in connection with their year end audits of HealthSouth's financial statements.

19. It was further part of the conspiracy that defendant **HICKS** wilfully and knowingly, would and did, directly and indirectly, (a) make and cause to be, made materially false and misleading statements to HealthSouth's accountants; and (b) omit to state, and cause others to omit to state, material facts necessary in order make statements made, in light of the circumstances under which such statements were made, not misleading to HealthSouth's accountants in connection with (1) the audit of HealthSouth's financial statements for the year ended December 31, 2000; and (2) the audit of HealthSouth's financial statements for the year ended December 31, 2001.

20. It was further part of the conspiracy that defendant **HICKS** and others,

unlawfully, Willfully, and knowingly, directly and indirectly, falsified and caused to be falsified, books, records and accounts which, in reasonable detail, accurately reflected the transactions and dispositions of the assets of HealthSouth including, but not limited to, the summaries of material facts relating to HealthSouth's investment portfolio for the years ended December 31, 2000 and 2001.

OVERT ACTS

25. In furtherance of the conspiracy and to achieve the objects thereof, the conspirators committed and caused to be committed the following acts, among others, in the Northern District of Alabama and elsewhere:

(1) In or about the late fall or early winter of 2000, defendant **HICKS** received information indicating that the value of HealthSouth's investment in a privately held company ("the privately held company") which operated senior residential assisted living facilities ("the assisted living facility investment") would be substantially impaired unless HealthSouth participated in an additional round of financing being offered by the privately held company.

(2) In or about the end of 2000, defendant **HICKS** informed the **CEO** and one of the other Senior Officers that the value of HealthSouth's assisted living facility investment, which HealthSouth carried on its balance sheet at \$13 million, that the investment should be written off or its value would be substantially impaired unless HealthSouth participated in an additional round of financing being offered by the privately held company.

(3) In or about winter or spring of 2001, one of the Senior Officers instructed defendant **HICKS** not to inform HealthSouth's auditors orally or in writing that the value of the

assisted living facility investment was contingent upon HealthSouth's participation in an additional round of financing being offered by the privately held company.

(4) In or about the spring of 2001, defendant **HICKS** caused the preparation of a **summary** of the assets in HealthSouth's investment portfolio to be provided to HealthSouth's accountants in connection with their audit of HealthSouth's financial statements for the year ended December 31, 2000, which contained false information and omitted material facts concerning HealthSouth's assisted living facility investment.

(5) In or about the spring of 2001, during the audit of HealthSouth's financial statements for the year ended December 31, 2000, defendant **HICKS** provided HealthSouth's accountants with the investment portfolio summary described above which contained false information and omitted material facts about the value of the assisted living facility investment.

(6) In or about the spring of 2001, defendant **HICKS** met with HealthSouth's accountants during their audit of HealthSouth's financial statements for the year ended December 31, 2000, discussed HealthSouth's investment portfolio and omitted material facts concerning the value of the assisted living facility investment.

(7) On or about March 27, 2001, the Senior Officers caused HealthSouth to send by wire from Birmingham, Alabama to Washington, **D.C.** for delivery to the **SEC**, the company's Form 10-K for 2000 which omitted material facts concerning the company's assisted living facility investment.

(8) In or about 2001, defendant **HICKS** learned that HealthSouth would not and did not participate in the additional round of financing offered by the privately held company

and that as a result HealthSouth's assisted living facility investment was substantially worthless. Defendant **HICKS** advised one of the Senior Officers that HealthSouth could not fairly represent the value of the assisted living facility investment as \$13 million and that HealthSouth was required to write down the value of the investment.

(9) In or about 2001, one of the Senior Officers told defendant **HICKS** that HealthSouth would not write down the value of the assisted living facility investment and that HealthSouth would continue to represent on its books and to its auditors that the investment was valued at \$13 million.

(10) In or about the spring of 2002, one of the Senior Officers instructed defendant **HICKS** not to inform HealthSouth's accountants of certain material facts concerning the \$13 million valuation which HealthSouth placed on its assisted living facility investment.

(11) In or about the spring of 2002, defendant **HICKS** caused the preparation of a summary of the assets in HealthSouth's investment portfolio to be provided to HealthSouth's accountants in connection with their audit of HealthSouth's financial statements for the year ended December 31, 2001 which contained false information and omitted material facts concerning the value of the assisted living facility investment.

(12) In or about the spring of 2002, during the audit of HealthSouth's financial statements for the year ended December 31, 2001, defendant **HICKS** provided HealthSouth's accountants with an investment portfolio **summary** which contained false information and omitted material facts about the value of the assisted living facility investment.

(13) In or about the spring of 2002, defendant **HICKS** met with HealthSouth's accountants during their audit of HealthSouth's financial statements for the year ended

December

31,2001, discussed HealthSouth's investment portfolio and omitted material facts concerning the value of the assisted living facility investment.

(14) On or about March 27,2002, the Senior Officers caused HealthSouth to send by wire from Birmingham, Alabama to Washington, **D.C.** for delivery to the SEC the company's Form 10-K for 2001 containing a balance sheet which falsely overvalued by millions of dollars the company's assisted living facility investment.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
Forfeiture
Title 18, United States Code, Section 981(a)(1)(C) &
Title 28, United States Code, Section 2461(c)

The United States Attorney further charges:

1. That Count One of this Information is incorporated by reference herein for the purpose of alleging criminal forfeiture pursuant to Title 18, United States Code, Section **981(a)(1)(C)** and Title 28, United States Code, Section **2461(c)**.

2. As a result of the foregoing offenses alleged in Count One of this Information, the defendant,

WILL HICKS

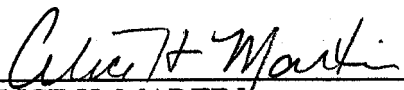
shall forfeit to the United States any property constituting or derived from proceeds traceable to said violation committed by him. Such forfeitable interests include, but are not limited to, any and all interest and proceeds derived therefrom.

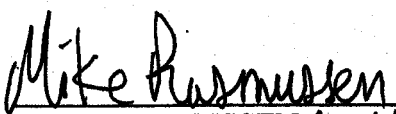
3. If any of the property described above as being subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), as a result of any act or omission of the defendant,

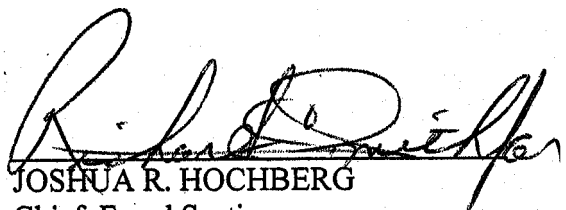
- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred to, sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property that cannot be subdivided without difficulty;

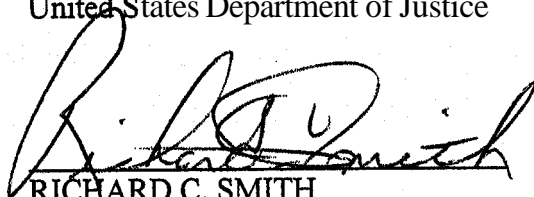
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant, up to the value of the above forfeitable property.


All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).


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